



# **PLANNING COMMISSION AGENDA REPORT**

*III. 1.*

MEETING DATE: JANUARY 23, 2006

ITEM NUMBER:

**SUBJECT:** AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF COSTA MESA, CALIFORNIA AMENDING TITLE 13 OF THE COSTA MESA MUNICIPAL CODE REGARDING THE DEFINITION, REVIEW PROCEDURE, AND REGULATION OF "ASSEMBLY USE".

**DATE:** JANUARY 11, 2006

**FOR FURTHER INFORMATION CONTACT:** KIMBERLY BRANDT, AICP, PRINCIPAL PLANNER  
(714) 754-5604

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## **DESCRIPTION**

An ordinance amending the City of Costa Mesa Zoning Code to include a definition of "assembly use" and to establish the review procedure and regulation of assembly uses.

## **RECOMMENDATION**

Recommend to City Council that the ordinance be given first reading.

  
KIMBERLY BRANDT, AICP  
Principal Planner

  
R. MICHAEL ROBINSON, AICP  
Assistant Development Svs. Director

## **BACKGROUND**

On August 22, 2005 and September 26, 2005, Planning Commission considered a proposed ordinance, which would allow churches/places of religious assembly to be "permitted" land uses in the C1 and C2 commercial zones, provided that they were located a minimum of 200 feet away from any residential zone and comply with all other applicable code standards including parking. On a 3-2 vote (Egan and Garlich voting no), Commission recommended to City Council that the City's existing zoning regulations be retained for this land use.

On October 18, 2005, Council considered the proposed ordinance and Commission's recommendation. After deliberation, Council tabled the ordinance and directed staff to prepare a new ordinance that requires a conditional use permit for all assembly uses and includes a definition of religious assembly, on a 3-1 vote (Foley voting no; Monahan absent). The Council minutes are provided in Attachment 2.

## **ANALYSIS**

The Zoning Code presently does not define "assembly use"; the proposed definition is as follows:

**"Assembly use.** A use conducted in a structure or portion of a structure for the purpose of a civic, education, political, religious, or social function or for the consumption or receipt of food and/or beverages. Assembly use includes, but is not limited to, churches and other places of religious assembly, mortuaries, primary and secondary schools, trade and vocational schools, colleges, amusement centers, billiards parlors, bowling centers, establishments where food or beverages are served, motion picture theaters, physical fitness facilities, skating rinks, and dance, martial arts, and music studios. Assembly use does not include sexually oriented business."

This definition encompasses several types of land uses that are presently called out separately in the City's Land Use Matrix, which is contained in the Zoning Code. Most notably restaurants, bars, nightclubs, churches/places of religious assembly, movie theaters, and private schools would all be treated similarly in the Land Use Matrix.

The Zoning Code presently allows restaurants and bars with less than 300 square feet of public area as a "permitted use"; specifically a conditional use permit is not required. Staff is proposing that this threshold of less than 300 square feet of public area be also applied to churches/other places of religious assembly and studios (dance, martial arts, music, etc.) to maintain a consistent threshold for these assembly uses. If the public area were greater than 300 square feet, then a conditional use permit would be required; if not, the use would be a permitted use. Staff did not think it probable that a mortuary, school, college, amusement center, billiard parlor, bowling center, theater, health club, or skating rink would contain less than 300 square feet of public area; therefore, the threshold was not proposed for these particular assembly uses.

As noted in the revised Land Use Matrix (Table 13-30), which is attached to the draft ordinance in Attachment 1, all assembly uses are proposed to require conditional use permits, with the exceptions noted above. The Zoning Code currently varies in the review requirement, depending on the land use, zoning district, and physical and operational characteristics of the proposed use.

### **ALTERNATIVES CONSIDERED**

Commission may choose to do any of the following:

1. Recommend to Council that first reading be given to the ordinance as recommended by the staff; or
2. Modify any of the recommended changes to the ordinance; or
3. Recommend to Council that the City's existing zoning provisions be retained.

### **ENVIRONMENTAL DETERMINATION**

This code amendment has been reviewed for compliance with the California Environmental Quality Act (CEQA), the CEQA Guidelines, and the City's environmental procedures, and has been found to be exempt.

Attachments:      1. Proposed Ordinance - (strike-through version)  
                              2. City Council Minutes

Distribution:      Deputy City Manager - Dev. Svs. Director  
                              Deputy City Attorney  
                              City Engineer  
                              Fire Protection Analyst  
                              Staff (4)  
                              File (2)

File: 012306Title13AssemblyUse	Date: 010906	Time: 10:00 a.m.
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**ATTACHMENT 1**  
**PROPOSED ORDINANCE**

## ORDINANCE NO. 06-

### AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF COSTA MESA, CALIFORNIA AMENDING TITLE 13 OF THE COSTA MESA MUNICIPAL CODE REGARDING THE DEFINITION, REVIEW PROCEDURE, AND REGULATION OF "ASSEMBLY USE".

THE CITY COUNCIL OF THE CITY OF COSTA MESA DOES HEREBY ORDAIN AS FOLLOWS:

Section 1. Title 13 of the Costa Mesa Municipal Code is hereby amended to read as follows:

a. Amend Section 13-6 to include the following definition:

**"Assembly use.** A use conducted in a structure or portion of a structure for the purpose of a civic, education, political, religious, or social function or for the consumption or receipt of food and/or beverages. Assembly use includes, but is not limited to, churches and other places of religious assembly, mortuaries, primary and secondary schools, trade and vocational schools, colleges, amusement centers, billiards parlors, bowling centers, establishments where food or beverages are served, motion picture theaters, physical fitness facilities, skating rinks, and dance, martial arts, and music studios. Assembly use does not include sexually oriented business."

b. Amend the following definition in Section 13-6:

**"Public area – assembly use establishments where food or beverages are served.** That portion of a structure, an entire structure, or an exterior area establishment reserved for the exclusive use of the public assembling for the purpose of a civic, education, political, religious, or social function or for the receipt or consumption of food and/or beverages. For the purpose of this Zoning Code, public area shall not include restrooms, kitchens, hallways, offices, or other areas restricted to employees only."

c. Amend Table 13- 30 as shown in Attachment A.

d. Amend Table 13-47 as shown below:

<b>"TABLE 13-47 PERMITTED AND CONDITIONALLY PERMITTED USES</b>								
<b>LOCATION AND OPERATIONAL CHARACTERISTICS</b>	<b>CT-S</b>	<b>C1</b>	<b>C2</b>	<b>CL</b>	<b>TC</b>	<b>PD</b>	<b>MC</b>	<b>MP</b>
Establishments with 300 square feet or less of public area.  <u>Exception: If located in a multi-tenant center where 30% or more of the tenants are similar businesses, i.e., establishments with less than 300 square feet of public area, the establishment shall be subject to review and approval of a minor conditional use permit.</u>	P <sup>1,2</sup> or P	P	P	MC P	P <sup>1</sup> or P	P <sup>1</sup> or P	P	P
Establishments with more than 300 square feet of public area.	P <sup>1</sup> or P C	P C	P C	MC C	P <sup>1</sup> or P C	P <sup>1</sup> or P C	MC C	MC C
<b><u>ADDITIONAL REQUIREMENTS</u></b>								
<ol style="list-style-type: none"> <li>Establishments located within 200 feet of a residential zone are subject to the requirements of Section 13-49 DEVELOPMENT STANDARDS FOR ESTABLISHMENTS WITHIN 200 FEET OF RESIDENTIALLY ZONED PROPERTY.</li> <li>Establishments with drive-through operations are subject to the requirements of Section 13-50 DEVELOPMENT STANDARDS FOR DRIVE-THROUGH OPERATIONS.</li> <li>Establishments with live or public entertainment are subject to the requirements of Title 9, Article 11, REGULATORY PERMITS FOR PUBLIC ENTERTAINMENT.</li> </ol>								
<b><u>EXCEPTIONS</u></b>								
Located within 200 feet of a residential zone. (Subject to the requirements of Section 13-49 DEVELOPMENT STANDARDS FOR ESTABLISHMENTS WITHIN 200 FEET OF RESIDENTIALLY ZONED PROPERTY)	P <sup>1</sup> or P	P	P	MC	P <sup>1</sup> or P	P <sup>1</sup> or P	P	P
Sale of alcoholic beverages for on-site consumption after 11:00 p.m. and/or provision of live entertainment or dancing located within 200 feet of a residential zone.	P <sup>1</sup> or C	C	C	C	P <sup>1</sup> or C	P <sup>1</sup> or C	C	C
Sale of alcoholic beverages for on-site consumption after 11:00 p.m. and/or provision of live entertainment or dancing located not within 200 feet of a residential zone.	P <sup>1</sup> or MC	MC	MC	MC	P <sup>1</sup> or MC	P <sup>1</sup> or MC	MC	MC
Drive-through operations. (Subject to the requirements of Section 13-50 DEVELOPMENT STANDARDS FOR DRIVE-THROUGH OPERATIONS)	P <sup>1</sup> or MC	MC	MC	MC	P <sup>1</sup> or MC	P <sup>1</sup> or MC	MC	MC
Establishments with less than 300 square feet of public area located in a multi-tenant center where 30% or more of the tenants are similar businesses, i.e., establishments with less than 300 square feet of public area.	P <sup>1</sup> or MC	MC	MC	MC	P <sup>1</sup> or MC	P <sup>1</sup> or MC	MC	MC
Establishments with a micro-brewery	P <sup>1</sup> or C	C	C	C	P <sup>1</sup> or C	P <sup>1</sup> or C	C	C
<ol style="list-style-type: none"> <li>Pursuant to an approved master plan which specifies these operational characteristics and/or location of the business.</li> <li>For the purposes of this table, the symbols in the non-shaded areas shall have the following meaning: P= Permitted; MC= Minor Conditional Use Permit; C= Conditional Use Permit."</li> </ol>								

- e. Amend Section 13-49 to read as follows:

"Establishments where food or beverages are served that are within 200 feet of residentially-zoned property shall comply with the following development standards, unless the standards are modified through the issuance of a ~~minor conditional use permit~~ or conditional use permit."

- f. Amend Section 13-50 to read as follows:

"Establishments with drive-through operations shall comply with the following development standards, unless the standards are modified through the issuance of a ~~minor conditional use permit~~."

- g. Amend Section 13-50(d) to read as follows:

"(d) Each drive-through lane shall be a minimum of 160 feet in length, unless modified by the final review authority Zoning Administrator. The length of the drive-through lane shall be measured from its entrance point to the pick-up window."

- h. Amend Section 13-50(f) to read as follows:

"(f) Application for a ~~minor conditional use permit~~ shall include an operation statement indicating the physical improvements and operational measures proposed to minimize idling vehicle emissions."

- i. Amend Section 13-51(g) to include the following subparagraph:

"(g) The introduction of a micro brewery."

Section 2. Environmental Determination. The project has been reviewed for compliance with the California Environmental Quality Act (CEQA), the CEQA Guidelines, and the City's environmental procedures, and has been found to be exempt.

Section 3. Inconsistencies. Any provision of the Costa Mesa Municipal Code or appendices thereto inconsistent with the provisions of this Ordinance, to the extent of such inconsistencies and no further, is hereby repealed or modified to the extent necessary to affect the provisions of this Ordinance.

Section 4. Severability. If any chapter, article, section, subsection, subdivision, sentence, clause, phrase, or portion of this Ordinance, or the application thereof to any person, is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portion of this Ordinance or its application to other persons. The City Council hereby declares that it would have adopted this Ordinance and each chapter, article, section, subsection, subdivision, sentence, clause, phrase or portion thereof, irrespective of the fact that any one or more subsections, subdivisions, sentences, clauses, phrases, or portions of the application thereof to any person, be declared invalid or unconstitutional. No portion of this Ordinance shall supersede any local, State, or Federal law, regulation, or codes dealing with life safety factors.

Section 5: This Ordinance shall take effect and be in full force thirty (30) days from and after the passage thereof and prior to the expiration of fifteen (15) days from its passage shall be published once in the ORANGE COAST<sub>3</sub>DAILY PILOT, a newspaper of general

circulation, printed and published in the City of Costa Mesa or, in the alternative, the City Clerk may cause to be published a summary of this Ordinance and a certified copy of the text of this Ordinance shall be posted in the office of the City Clerk five (5) days prior to the date of adoption of this Ordinance, and within fifteen (15) days after adoption, the City Clerk shall cause to be published the aforementioned summary and shall post in the office of the City Clerk a certified copy of this Ordinance together with the names and member of the City Council voting for and against the same.

PASSED AND ADOPTED this \_\_\_\_ day of \_\_\_\_\_, 2006

\_\_\_\_\_  
Mayor

ATTEST:

APPROVED AS TO FORM:

\_\_\_\_\_  
City Clerk of the  
City of Costa Mesa

\_\_\_\_\_  
City Attorney



STATE OF CALIFORNIA)  
COUNTY OF ORANGE) ss  
CITY OF COSTA MESA)

I, Julie Folcik, Deputy City Clerk and ex-officio clerk of the City Council of the City of Costa Mesa, hereby certify that the above and foregoing Ordinance No. 06\_\_ was introduced and considered section by section at a regular meeting of said City Council held on the \_\_\_\_ day of \_\_\_\_\_, 2006 and thereafter passed and adopted as a whole at a regular meeting of said City Council held on the \_\_\_\_ day of \_\_\_\_\_, 2006 by the following roll call vote:

AYES:

NOES:

ABSENT:

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the Seal of the City of Costa Mesa this \_\_\_\_ day of \_\_\_\_\_, 2006

\_\_\_\_\_  
Deputy City Clerk and ex-officio  
Clerk of the City Council of the  
City of Costa Mesa

# ATTACHMENT A

CITY OF COSTA MESA LAND USE MATRIX													
LAND USES	ZONES												
	R1	R2 MD	R 2 H D	F 3 P	A	CL	C 1	C 2	C 1 S	T C	M G	M P	P D R L D
24. Churches and other places of religious assembly with more than 300 square feet of public area	C	C	C	C	C	C	C	C	C	C	C	C	C
24a. Churches and other places of religious assembly with 300 square feet or less of public area	P	P	P	P	P	P	P	P	P	P	P	P	P
25. Civic and community clubs	C	C	C	C	C	C	C	C	C	C	C	C	C
37. Schools: trade and vocational	•	•	•	•	•	MC	C	P	C	P	MC	MC	P
75. Entertainment, live or public	•	•	•	•	•	•	•	•	•	•	•	•	•
99. Motion picture theaters and other theaters NOT WITHIN 200' of residential zones Reserved.	•	•	•	•	•	•	•	•	•	•	•	•	•
100. Motion picture theaters and other theaters WITHIN 200' of residential zones	•	•	•	•	•	•	•	•	•	•	•	•	•
142. Studios: Dance; Martial arts; Music, etc. with 300 square feet or less of public area	•	•	•	•	•	•	•	•	•	•	•	•	•

1. Uses proposed in this zone are subject to verification of consistency with the adopted master plan. Uses not specified in the master plan, could be allowed, subject to the review process indicated in this matrix, if the proposed use is determined to be compatible with the adopted master plan.
2. This use is subject to the requirements of the referenced Municipal Code article or section.
3. If residential uses exist, accessory uses shall be permitted.
4. For the purposes of this table, the symbols in the non-shaded areas shall have the following meaning: C - Conditional Use Permit; MC - Minor Conditional Use Permit; P - Permitted; • - Prohibited



**ATTACHMENT 2**  
**CITY COUNCIL MINUTES**

In response to Council Member Dixon's question regarding utilizing a sliding scale approach in the percentage of space that may be used for retail space, the Principle Planner advised that staff could bring back the ordinance with that alternative included.

There were no public speakers under public comment.

**Moved by Council Member Linda Dixon, seconded by Mayor Allan Mansoor.**

**MOTION: Table the hearing to a future date and direct staff to bring back alternatives, such as a sliding scale, that would allow businesses in the industrial zone a percentage of retail space and to re-notice the public hearing.**

Mayor Mansoor asked that the motion include consideration of a specified square footage of retail space. Council Member Dixon agreed.

The motion carried by the following roll call vote:

Ayes: Council Member Katrina Foley, Council Member Linda Dixon,  
Mayor Allan Mansoor

Noes: None.

Abstain: Council Member Eric Bever

Absent: Mayor Pro Tem Gary Monahan

Council Member Bever returned to the Council Chambers.

The Deputy City Clerk announced that this was the time and place set for a public hearing to consider:

5. PUBLIC HEARING: AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF COSTA MESA, CALIFORNIA, AMENDING TITLE 13 OF THE COSTA MESA MUNICIPAL CODE REGARDING CHURCHES/PLACES OF RELIGIOUS ASSEMBLY IN COMMERCIAL ZONES. Environmental determination: exempt.

The Affidavit of Publication is on file in the City Clerk's Office.

The Principal Planner presented the Agenda Report and responded to questions of the Council.

Ernie Feeney, Costa Mesa, supported maintaining the existing zoning explaining that requiring a Conditional Use Permit (CUP) provides a means for the City to review the permit if there is a violation.

**MOTION: Table the hearing to a future meeting allowing staff to bring back an ordinance that requires a Conditional Use Permit (CUP) for all**

assembly uses in commercial zones.

Moved by Mayor Mansoor, seconded by Council Member Bever.

Council Member Foley commented that the staff report and the proposed ordinance were satisfactory. She felt adding all the assembly uses to the code increased the level of "bureaucracy".

Substitute motion by: Council Member Foley.

**SUBSTITUTE MOTION:** Direct staff to return with options for the ordinance, to include:

1. Modification of the existing proposed ordinance, providing definitions of religious assembly;
2. Bring back an ordinance that requires a CUP for all assembly uses in commercial zones;
3. Modify the institutional/recreational zoning as it relates to the Master Plan regarding religious institutions.

Substitute Motion died for a lack of second.

**Moved by Mayor Allan Mansoor, seconded by Council Member Eric Bever.**

**MOTION:** Table the hearing to a future meeting allowing staff to bring back an ordinance that requires a Conditional Use Permit (CUP) for all assembly uses in commercial zones and include various definitions of assembly.

The Mayor restated the motion confirming with the second that the addition was acceptable. Council Member Bever agreed.

Council Member Foley commented that she did not support the motion as it created more work, and would add back into the code that which was recently removed.

The motion carried by the following roll call vote:

Ayes: Council Member Linda Dixon, Council Member Eric Bever, Mayor Allan Mansoor

Noes: Council Member Katrina Foley

Absent: Mayor Pro Tem Gary Monahan

The Deputy City Clerk announced that this was the time and place set for a public hearing to consider:

6. PUBLIC HEARING: A RESOLUTION OF THE CITY COUNCIL OF THE

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